

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE ARBITRATION

BETWEEN

SUPREME OIL COMPANY, INC.

Petitioner,

and

UFCW LOCAL 174 COMMERCIAL HEALTH
CARE FUND AND COMMERCIAL PENSION
FUND,

Respondent.

CIVIL ACTION NO:
07-cv-6479 (RJH)

AFFIDAVIT OF ANDREW
JOHN CALCAGNO, ESQ. IN
SUPPORT OF RESPONDENTS'
RESPONSE TO PETITIONER'S
APPLICATION TO VACATE
ARBITRATION AWARD

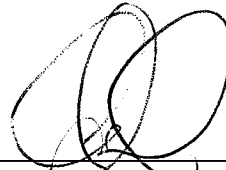
ANDREW JOHN CALCAGNO, ESQ., being duly sworn according to law, deposes and
says:

1. I am an attorney duly admitted to practice law in the United States District Court for the Southern District of New York.
2. I am special litigation counsel for the Respondents, UFCW Local 174 Commercial Health Care Fund and Commercial Pension Fund (the "Respondents" and/or the "Funds"), and as such, am fully familiar with the facts and circumstances in this matter.
3. I make this Affirmation in support of Respondents Response to Petitioner's Application to Vacate the Arbitration Award.
4. On October 26, 2006; March 21, 2007; April 26, 2007 and May 16, 2007, the parties in the within action appeared before Arbitrator Clarke to arbitrate certain differences the parties had in interpreting the Final Offer ("Final Offer") and for Petitioner's failure to remit contributions to the Funds.

5. After hearing testimony and reviewing documentation and evidence submitted by both parties, Arbitrator Clarke issued an Arbitration Award on June 13, 2007. See Arbitration Award, a copy of which is attached to Respondents' Brief as Exhibit A, and made a part hereof by reference.
6. On July 18, 2007, Respondents sent their Petition to Confirm the Arbitration Award to the United States District Court, Southern District of New York for filing.
7. The Petition was marked filed by the Clerk on July 19, 2007, was designated civil action number 07-CIV-6537, and assigned to the Honorable Sidney H. Stein, U.S.D.J.
8. At the time of the filing, Respondents were unaware that the Petitioner was filing the within action to vacate the Arbitration Award.
9. Larry M. Cole, Esq. ("Mr. Cole") appeared at each of the Hearings on behalf of Petitioner, Supreme Oil, and I appeared at each of the Hearings on behalf of the Respondents.
10. Several witnesses were subpoenaed to testify on behalf of the Funds: Thomas Cunningham ("Mr. Cunningham"), Business Agent for UFCW Local 1245 (the "Union"); Maria Vegas ("Ms. Vegas"), the Funds' Collection Manager; and Jim Smith, the Controller and Vice President of Supreme Oil.
11. No witnesses were subpoenaed to testify on behalf of Supreme Oil; although, Mr. Cole improperly attempted to call himself as a witness when the May 16, 2007 Hearing was coming to a close.
12. The Arbitration Award was rendered pursuant to the provisions of the Final Offer and the Arbitrator's interpretation of the Final Offer. See copy of Final Offer attached to Respondents' Brief as Exhibit B, and made a part hereof by reference.

13. Based upon the foregoing, Petitioner's Petition to vacate the Arbitration Award should be dismissed with prejudice in its entirety and reasonable attorneys' fees at the rate of \$375 per hour should be granted to the Respondents.

Dated: Staten Island, New York
August 21, 2007



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Sworn and subscribed to before me this

21st day of August, 2007


NOTARY PUBLIC

**MY COMMISSION EXPIRES
MAY 25, 2009**